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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Before the Honorable Vince G. Chhabria

KELLY WILSON,	)	No. 3:14-cv-1441-VC
	)	
Plaintiff,	)	
	)	
vs.	)	San Francisco,
	)	California
THE WALT DISNEY COMPANY, DISNEY	)	
ENTERPRISES, INC., WALT DISNEY	)	
PICTURES, and WALT DISNEY GROUP,	)	Thursday, April 9, 2015
INC.,	)	
	)	
Defendants.	)	
_____	)	

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND  
RECORDING - FTR 11:26-12:45

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(Appearances continued on following page.)

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BY:

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1       **APRIL 9, 2015**

11:26 A.M.

2                               **P R O C E E D I N G S**

3               **THE CLERK:** Calling case No. 14-cv-1441, Wilson vs.  
4 Walt Disney Company.

5               Counsel, please step forward and state your appearances  
6 for the record.

7               **MR. GIGNAC:** Good morning, Your Honor, I'm J. Paul Gignac  
8 with Arias Ozzello & Gignac representing the plaintiff,  
9 Kelly Wilson. Also present in court with me is Mischa Barteau  
10 from my firm, and also my co-counsel, J.A. Ted Baer.

11              Good morning.

12              **THE COURT:** Good morning, everyone.

13              **MR. KLAUS:** Good morning, Your Honor. Kelly Klaus from  
14 Munger Tolles & Olson, and with me are my colleagues, Erin Cox  
15 and Jordan Segall.

16              **THE COURT:** Good morning, everyone.

17              All right. Onto somewhat happier topic, perhaps.  
18 Although I suppose that's in the eye of the beholder.

19              I guess my reaction to the papers is that, you know, the  
20 plaintiff can't get summary judgment.

21              I don't think it's possible to rule as a matter of law  
22 that they are strikingly similar. I don't think that it's  
23 possible to rule as a matter of law that they are not  
24 substantially similar.

25              And I guess, really, I mean -- I guess -- and I'm pretty

1       strongly inclined -- and I guess I'm pretty firm on those two  
2       first points, that the plaintiff is not entitled to summary  
3       judgment. It's not -- you know, they can't be held, as a  
4       matter of law, to be strikingly similar, that I'm not -- you  
5       know, I don't think that it can be held, as a matter of law,  
6       that they're not substantially similar.

7               And so I think the only issue, really, that we need to  
8       discuss today is access. And my fairly strong inclination is  
9       that I can't say as a matter of law that the plaintiff didn't  
10      have access.

11             So Mr. Klaus, I think it's on you.

12             And, I mean, I have a -- I guess I have a number of  
13      questions I won't spit out all at once, but, you know, the main  
14      thing is just that people at Pixar, you know, saw *The Snowman*,  
15      stood on the stage with the plaintiff, apparently, gave talks  
16      about their works together at a film festival and, in  
17      particular, the San Francisco Film Festival, but then there's  
18      also the Santa Barbara Film Festival. And the fact that, you  
19      know, it was shown at six other film festivals.

20             And, you know, certainly at the San Francisco Film  
21      Festival and at least possibly at the other film festivals  
22      people who worked with Lasseter saw them.

23             And so the chain of events that gave Lasseter the  
24      opportunity to view or copy I think is a lot more direct, my  
25      sense is a lot more direct than some of the -- than some cases

1       that have actually held access, like those couple cases from --  
2       from -- those District Court decisions from Illinois, for  
3       example. There were a couple of them.

4             And it doesn't seem like you have a case where the  
5       connection was nearly as close as this one where a Court said  
6       that there was no access as a matter of law.

7             So I guess -- and I do focus primarily on the film  
8       festivals in reaching that tentative conclusion. Although I  
9       think -- you know, I think it may be that the applications do  
10      some work as well, arguably. But primarily the film festivals,  
11      I would say.

12            So anyway, if you could address that.

13           **MR. KLAUS:** Sure, Your Honor. And on the film festival  
14      are we just talking about San Francisco? Because the  
15      Santa Barbara Film Festival, which the plaintiff made a huge  
16      deal out of in her opening brief, seems like the evidence for  
17      that collapsed when it was clear that everyone from Pixar  
18      had --

19           **THE COURT:** Either left or not arrived.

20           **MR. KLAUS:** -- either left or not arrived.

21           **THE COURT:** Right.

22           **MR. KLAUS:** So I think we're talking about one film  
23      festival, which is San Francisco.

24           **THE COURT:** So, I mean, that actually raises kind of a  
25      burning question for me that I have about access and the way

1 the Courts treat access, but -- and we'll get to that.

2 But for the purposes of the initial part of our  
3 discussion, why don't we limit our focus to the San Francisco  
4 Film Festival.

5 There were people at the San Francisco Film Festival who  
6 saw *The Snowman* who worked with Lasseter. Why isn't that  
7 connection just right there. What I just said.

8 And I realize one of the people was -- went on leave and  
9 didn't come back, but --

10 But what I just said. Why isn't that enough to establish  
11 enough of a connection to avoid a conclusion that there was no  
12 access as a matter of law.

13 **MR. KLAUS:** Because the case law -- and let's start with  
14 Judge Pfaelzer's opinion in the *Meta-Film* case. That was the  
15 *Animal House* case from the Central District of California.

16 What Judge Pfaelzer says there, very clearly, is that the  
17 intermediary -- and in this case we have -- John Lasseter was  
18 not at the film festival.

19 **THE COURT:** Right.

20 **MR. KLAUS:** No one, insofar as we know, continued to work  
21 with Mr. Lasseter in any sort of creative capacity at Pixar was  
22 at the film festival.

23 The plaintiff deposed Ms. Klaidman, who's the archivist  
24 and the director of Pixar University, and -- who said she  
25 didn't remember the film, she didn't discuss it with

1 Lasseter --

2 THE COURT: But could I just --

3 MR. KLAUS: Yes. Go ahead.

4 THE COURT: -- interrupt?

5 I'm looking at the *Meta-Film* case --

6 MR. KLAUS: Yeah.

7 THE COURT: -- and the judge in that case goes on to  
8 distinguish -- distinguishes a bunch of other cases where  
9 Courts held that there was access, or that there was a fact  
10 issue on whether there was access.

11 And what the judge says is, "In each of these cases, an  
12 individual in a position to provide suggestions or comments  
13 with respect to the defendant's work had the opportunity to  
14 view the plaintiff's work."

15 Why doesn't this case fit that description?

16 MR. KLAUS: Because no one at Pixar was in a position to  
17 provide comment on suggestions on the *Frozen* teaser trailer.

18 THE COURT: But that -- so that -- I mean, and that gets  
19 to the -- I mean, in these cases, you know, I think we judges  
20 are instructed, at the summary judgment stage, to not credit  
21 the defendant's evidence on stuff like that. Right?

22 And so it may be that everybody at Disney and Pixar  
23 testifies that -- let me -- scratch that.

24 It may be that everybody involved in the creation of the  
25 *Frozen* teaser trailer says, "Nobody at Pixar had any

1 opportunity to provide me with any input about this."

2 But we judges at the summary judgment stage, I think, are  
3 instructed not to credit that kind of testimony because that's  
4 for the jury. And what we are supposed to do is look at the  
5 connection and look at how closely connected the people are,  
6 without regard to what -- their testimony about what they  
7 actually -- what their own opportunities were to communicate  
8 with one other.

9 MR. KLAUS: With respect, I don't think that's true with  
10 respect to the issue we're talking about here, which is, as a  
11 factual matter, is there any evidence that people from Pixar --  
12 or, again, in Judge Pfaelzer's -- the words of Judge Pfaelzer's  
13 order, which this is *Meta-Film* 586 F.Supp. at 1355 through -56.

14 Was the intermediary, was that person, in a position to  
15 transmit it to the copier, either was a supervisor with  
16 responsibility for the defendant's project.

17 THE COURT: Mm-hm.

18 MR. KLAUS: That's not true of any of the people who were  
19 at the San Francisco Film Festival.

20 Was part of the same work unit as the alleged copier.

21 Not true of anyone at the San Francisco Film Festival  
22 unless one is to -- unless one concludes that simply because  
23 John Lasseter is at Pixar and is the chief creative officer  
24 there every person in the company who works with him is deemed  
25 to be part of the same unit.



1           **THE COURT:** What about every creative person? What about  
2 every person in the company who works on -- who is creative?

3           **MR. KLAUS:** I think that in the case -- if that were the  
4 rule, Your Honor, then --

5           **THE COURT:** And I didn't mean creative in, like,  
6 describing their personalities. I mean their job assignments.

7           **MR. KLAUS:** Yes. And I think that the problem with that,  
8 Your Honor, is that the undispute- -- and it really is, it's  
9 undisputed here, the plaintiffs don't dispute, that people --  
10 that Pixar projects are separate from Walt Disney Animation  
11 Studios projects.

12           And I think when we look at the other cases -- and  
13 frankly, it's the *Meta-Film* case itself. The person who -- the  
14 gentleman, Badham, I think was his name --

15           **THE COURT:** Yes.

16           **MR. KLAUS:** -- who worked on the lot, he was a director.

17           **THE COURT:** Worked on what?

18           **MR. KLAUS:** He worked on the lot. That was the --

19           **THE COURT:** Oh.

20           **MR. KLAUS:** The theory was, "Well, I've (indiscernible)  
21 my thing off at the lot." He has lunch with people. He has --  
22 they engage -- they engage in conversations in the elevator.

23           And what the Courts have said is no, that's not -- that  
24 is speculation and conjecture and you don't create a fact issue  
25 by saying, "Well, they're all in a creative business."

1           **THE COURT:** Mm-hm. But did Badham work with the people  
2 who created *Animal House*?

3           **MR. KLAUS:** He, I believe --

4           **THE COURT:** Where, in the *Meta-Film* decision, does it say  
5 that Badham worked with the people who created *Animal House*?"

6           **MR. KLAUS:** Well, it says that -- on the top of page 35,  
7 one of the plaintiff's theories --

8           **THE COURT:** Sorry. Wait. Wait. Hold on. Let me get  
9 there. Top of page what?

10          **MR. KLAUS:** 1355.

11          **THE COURT:** 1355.

12          **MR. KLAUS:** One of the theories was -- and this is  
13 very -- frankly, very similar to the plaintiff's theory here,  
14 was that Badham delivered or described the treatment that he'd  
15 gotten to a Universal executive, most likely Ned Tanen, with  
16 whom he worked during the post-production period of his movie.

17          **THE COURT:** Wait. Hold on. Hold on. I'm trying to find  
18 the language.

19               I'm having a hard time finding -- you said the top of  
20 1355?

21          **MR. KLAUS:** I'm sorry, Your Honor. Are you looking at  
22 the two-column Westlaw or the one --

23          **THE COURT:** I'm looking at the two-column Westlaw.

24          **MR. KLAUS:** So this is -- I use the old PDF style  
25 printout. It's the upper right-hand side of the page 1355.

1           **THE COURT:** All right. Okay. So it's probably a little  
2 bit later in my -- okay. Hold on.

3           So how does the paragraph start that you're looking at?

4           **MR. KLAUS:** "In attempting to establish...".

5           **THE COURT:** Oh, okay. All right. I'm there.

6           (Reading.) Plaintiff constructs a tortuous -- I assume  
7 what she means to say is torturous -- torturous chain of  
8 hypothetical transmittals. Plaintiff speculates that the chain  
9 proceeded as follows: Chase Mellon submitted the *Frat Rats*  
10 screenplay to Badham, Badham delivered or transcribed it to a  
11 Universal executive, most likely Ned Tanen, with whom he worked  
12 during the post-production period of *Bingo Long*, or, one of  
13 those executives, while in Badham's office to discuss *Bingo*  
14 *Long*, saw *Frat Rats* on Badham's desk and read it, and then Ned  
15 Tanen described *Frat Rats* to his assistant, Gerald Miller,  
16 Miller then passed along this information to Matty Simmons  
17 during one of their conversations, and finally Simmons provided  
18 this information to the writers of the treatment, Chris Miller,  
19 Doug Kenney, and Harold Ramis.

20           Plaintiff offers this hypothetical scenario in spite of  
21 the fact that it's not supported by a shred of evidence, that  
22 Badham had no connection with the treatment -- that Badham had  
23 no connection with the treatment. (End reading.)

24           So if your intermediary, by analog, in this case is  
25 Badham, we have two things. One, Badham had no connection with

1 the treatment. Here, the people at the San Francisco Film  
2 Festival obviously saw the work and were on stage with the  
3 plaintiff talking about the work.

4 And then -- so that's one distinction between this case  
5 and *Meta-Film*.

6 And then the second distinction, I think, is that there  
7 is a very attenuated connection that the plaintiff hypothesized  
8 between Badham and the creators of *Animal House*, whereas here  
9 we're just talking about the people who went to the  
10 San Francisco Film Festival working with Lasseter.

11 **MR. KLAUS:** I think, Your Honor, with respect, when you  
12 say "the treatment," the issue is Badham was the person who  
13 received the plaintiff's treatment in the case.

14 **THE COURT:** Right.

15 **MR. KLAUS:** Badham, who is the analog to the people who  
16 were in the audience at the film festival, they saw *The*  
17 *Snowman*. There has to be a -- there has to be a chain of  
18 events by which they then described *The Snowman* to Lasseter.

19 **THE COURT:** That's for a jury. That's for a jury. The  
20 only question now is whether there is a sufficient connection  
21 between Lasseter and the people who saw *The Snowman* to justify  
22 sending it to the jury on the question of access.

23 And the standard is, is there a reasonable -- was there a  
24 reasonable possibility that Lasseter, or someone else in the  
25 creative process for the teaser trailer, had access.

1 And on summary judgment, it is, is there a genuine issue  
2 of fact on whether there is a reasonable possibility.

3 So in other words, could any reasonable juror decide,  
4 based on this connection, that there was a reasonable  
5 possibility that Lasseter had the opportunity to view or copy  
6 *The Snowman*.

7 And given the relative directness of the connection  
8 compared to the *Meta-Film* case and compared to some of the  
9 cases which held that there was access, or there could -- or  
10 the question of access should go to a jury, I just don't see  
11 how I can say, as a matter of law, that there was no access  
12 here.

13 **MR. KLAUS:** Your Honor, I think that there's still a --  
14 there's still a chain of events that has -- that there is an  
15 implicit chain of events that, as the *Meta-Film* case and others  
16 make clear, is not necessarily for the jury.

17 And Courts -- the *Gable* case, the *My Name is Bro* case  
18 from Judge Wilson, also in the Central District, that make it  
19 clear, Your Honor, that one still has to look at what is the --  
20 what is the hypothesized chain of events.

21 The hypothesized chain of events here is that people who  
22 it is undisputed had zero involvement with the *Frozen* teaser  
23 trailer, which came -- which started to be developed two years  
24 after this film festival, went back to Pixar, somehow got the  
25 information -- either directly or indirectly -- to Lasseter

1 about this movie, that Lasseter at that point viewed the movie  
2 and then, two years later, in the face of copious notes  
3 documenting the independent development of this -- of this  
4 work, somehow reached back -- I think where -- I think the  
5 YouTube conspiracy theory is gone now as a result of the  
6 analysis of the analytics, but that somehow what happened was  
7 that Lasseter, through either extraordinary recall or, say,  
8 "Somebody at Pixar told me about this two years ago and I'm  
9 going to come up with this," it is -- it is, with respect, Your  
10 Honor, pretty fantastical and pretty attenuated.

11 And the fact that there is a -- and let's compare this to  
12 something like --

13 **THE COURT:** I mean, it's not nearly as fantastical or  
14 attenuated as the connection that I just read to you from the  
15 *Meta-Film* case. Wouldn't you agree with that?

16 **MR. KLAUS:** No, I wouldn't agree with that. Because  
17 there was a much closer time of contemporaneousness in the  
18 case.

19 And in both cases I think the treatment was done within  
20 the matter of a year.

21 But the point is, Your Honor, in both cases what is the  
22 missing element here is some -- some link that says there is  
23 some reason to believe that someone who attended this film  
24 festival somehow got that information about *The Snowman* to  
25 Lasseter and that it was recalled in the face of the evidence

1 of the development of the work --

2 THE COURT: But one of the things --

3 MR. KLAUS: -- when there's --

4 THE COURT: I'm sorry. I was just going to say, one of  
5 the things, I guess, that's a little bit different about this  
6 case is, you know, oftentimes in these cases you have somebody,  
7 you know, submitting a screenplay; right?

8 And we've all seen the TV shows and the movies about, you  
9 know, people who review screenplays and they get sent thousands  
10 of screenplays and, you know, it's impossible to review every  
11 screenplay that you get sent.

12 And so, you know, there are certain, like, logical, you  
13 know, inferences that you can draw about the import of somebody  
14 merely, you know, sending someone a screenplay in Hollywood.

15 But this is very different; right? I mean, this is --  
16 this person's -- Ms. Wilson's short was shown at a film  
17 festi- -- the San Francisco Film Festival, and it was, as I  
18 understand it, competing with the short that was produced by  
19 the Pixar folks.

20 And that's a really big deal. That's a much more  
21 notable, memorable event, I would think, than -- than just  
22 merely being one of 20,000 people who's trying to get some  
23 producer to read your screenplay.

24 And it's the kind of thing that you -- I think most  
25 people would assume, generates discussion back at the ranch;

1 right? I mean, you know, you're a Pixar employee, you have a  
2 short that's competing with other shorts -- presumably only a  
3 handful of them -- at the San Francisco Film Festival, and you  
4 go there and you watch all the shorts and somebody wins and you  
5 talk about -- you know, and you go up on stage and you talk  
6 about the -- you talk about the shorts and then you come back  
7 to the office and you talk about it.

8 I mean, everybody wants to know how it went, who won,  
9 why'd -- you know, what did you think of the winner? What did  
10 you think of the other?

11 I mean, those kinds of conversations, I think, are  
12 naturally expected to happen in a way that they don't when some  
13 random person just sends a screenplay to a producer.

14 **MR. KLAUS:** I don't believe that that's -- there's any  
15 evidence in the record, Your Honor, about that being the way  
16 that things went down with this film festival.

17 **THE COURT:** But that's not the question for me at summary  
18 judgment.

19 **MR. KLAUS:** No, it is -- I believe -- the theory that you  
20 are hypothesizing, which is that would be what is necessary to  
21 fill in this chain, is that there was something so  
22 extraordinary about the plaintiff's work, or so remarkable  
23 about the plaintiff's work --

24 **THE COURT:** Well, I wasn't saying that, just to be --  
25 just to slightly tweak what you're saying to me. I mean, I'm



1 not saying that there was something so remarkable about her  
2 work, necessarily. I'm also not saying that it was  
3 unremarkable.

4 But the point is that the Pixar employee having a short  
5 in a film festival and going up and competing against other  
6 shorts, that event is much more remarkable than somebody just  
7 randomly sending a screenplay to a producer.

8 **MR. KLAUS:** But the evidence on -- the testimony on the  
9 screening, Your Honor, is not that this was in the form of a  
10 competition, or that there was -- there was nothing awarded to  
11 the plaintiff. She wasn't on stage, accepting --

12 **THE COURT:** Wasn't there a winner, though?

13 **MR. KLAUS:** There was an award for a short category  
14 that -- along with a number of others, that I think she either  
15 ultimately received or had received before the festival  
16 started.

17 But the event itself, this particular screening at the  
18 Kabuki theater, there was no award handed out. The picture the  
19 plaintiff has put into the record, that's not her receiving an  
20 award.

21 **THE COURT:** Oh, no, I didn't think --

22 **MR. KLAUS:** That's her with a number of other people who  
23 are -- and the other thing is --

24 **THE COURT:** I actually didn't even think she won, and  
25 that wasn't -- I may be misremembering, but I didn't think she

1 actually won anything at that film festival either.

2 But that's not really my point. I mean, my point is just  
3 that the Pixar employees going up to compete in a -- or even  
4 just chosen to participate in a film festival is something that  
5 is much more likely to generate quite a bit of widespread  
6 conversation around the office, I would think.

7 **MR. KLAUS:** But the person who was -- the person who was  
8 on stage, who was Mr. Baena, when you say he went back to the  
9 office, his testimony was he was actually on leave from Pixar  
10 and he never went back.

11 And there's no evidence that anyone else who was there  
12 had creative involvement with -- directly with Lasseter, number  
13 one, no evidence of that, and, number two, there's no evidence  
14 that they had anything to do with him with respect to the  
15 teaser trailer, which took place two years later.

16 And the cases -- the cases that have found access in  
17 these sorts of theories, Your Honor, like, for example, the  
18 *Lady Gaga* case from the Northern District of Illinois, what you  
19 had there is you had a direct connection. The person who had  
20 worked with the plaintiff on her song had worked with Lady Gaga  
21 at least on the album and he had changed his story.

22 And so there was a -- in that case, you had -- I would  
23 submit -- extremely direct, extremely close connection between  
24 the two.

25 **THE COURT:** Yeah, I didn't read the case that way but I

1       need to pull it back up. This is the one -- it's *Francescatti*  
2       or something like that? Is that right?

3       **MR. KLAUS:** It's the *Francescatti* case, Your Honor.

4       **THE COURT:** Yeah. Hold on one second.

5       **MR. KLAUS:** Sure.

6       **THE COURT:** Yeah, give me just one second here.

7       So Gaynor was the -- Gaynor was the person to whom the  
8       plaintiff submitted -- submitted her -- her work, as she  
9       claimed ultimately Lady Gaga copied; right?

10       And so this kind of illustrates the point that I'm  
11       making. So the Court says, on page -- Lexis page 6 -- so this  
12       is just towards the end of the discussion on access.

13       (Reading.) To reach the conclusion that Francescatti --  
14       that the Francescatti song was available to defendants, a  
15       trier of fact would have to discredit the testimony of  
16       Gaynor, Blair and Gaga, that neither Blair nor Gaga  
17       received a copy of the Francescatti song, and further,  
18       that Gaynor either gave the Francescatti song to Gaga  
19       directly, or that he gave it to Blair and Blair then gave  
20       it to Gaga, and discredit Gaga and RedOne's testimony  
21       that they independently created the song. (End reading.)

22       And the Court says a jury could do that; right? Because  
23       all this testimony about, you know, to apply the concept to our  
24       case, you know, all this testimony about, you know, the people  
25       who attended the film festival who saw *The Snowman* never having

1 had an opportunity to, you know, converse with Lasseter about  
2 it or -- and therefore Lasseter never had an opportunity to  
3 view it -- and that's all stuff that, under the case law, seems  
4 like you're supposed to argue to a jury and get a jury to  
5 believe. But it's not my job to credit that testimony, as  
6 credible as it may seem on the surface.

7 **MR. KLAUS:** There has to be some reason -- with respect,  
8 Your Honor, I think there has to be some reason to doubt it.  
9 It is -- plaintiff has the burden of showing access. She has  
10 to show some direct chain.

11 And with respect to the -- with respect to Gaynor and the  
12 Francescatti case, the reason the Court said that a jury could  
13 discredit his testimony that he never saw it was because he  
14 changed his story.

15 He lied to the plaintiff --

16 **THE COURT:** Right.

17 **MR. KLAUS:** -- about whether he was with Lady Gaga in  
18 Paris, helping her with her album.

19 And when it appeared that it became inconvenient for that  
20 to be the fact, he changed his story.

21 Here you have nothing of the kind. You have Baena who  
22 says he never went back to Pixar. His communications with  
23 Lasseter in a creative capacity were with respect to the movie  
24 *Cars*, which was six years before the San Francisco Film  
25 Festival.

1           **THE COURT:** Could I just interrupt you? Just to be  
2 clear. The Lady Gaga -- Gaynor did not work with Lady Gaga --  
3 there was no evidence that Gaynor worked with Lady Gaga on her  
4 work. Gaynor worked with somebody else who worked with Lady  
5 Gaga. There's no direct collaboration between Gaynor and Lady  
6 Gaga.

7           Which, again, is, like, quite different from the  
8 situation here. Because -- because the people who went to the  
9 film festival worked with Lasseter.

10          **MR. KLAUS:** I mean, I'm looking on page -- I've got the  
11 Westlaw printout of that case, Your Honor, and I start on --  
12 Sorry. I'm looking for the asterisks.

13          **THE COURT:** So the --

14          **MR. KLAUS:** Under "Facts," it says, "In January 2010, Lee  
15 introduced Gaynor to Blair for the purpose of creating original  
16 material for Gaga to use --

17          **THE COURT:** Yeah, but he didn't work --

18          **MR. KLAUS:** "-- (indiscernible - simultaneous speaking)  
19 album."

20          **THE COURT:** But what it says later is that here it is  
21 Blair who is the third party. Gaynor worked on the  
22 Francescatti song before collaborating with Blair for the  
23 purpose of providing music to Gaga for the *Born This Way* album.

24          So it doesn't appear that Gaynor worked directly with  
25 Gaga. At least as far as -- I mean, I'm not sure that the

1 distinction is neither here nor there. I may have taken us on  
2 an unnecessary detour.

3 **MR. KLAUS:** No. It's an interesting detour, if nothing  
4 else, Your Honor. But it does -- I think what there was was a  
5 fact issue. Because Gaynor had told the plaintiff that he was  
6 in Paris to work with her.

7 And what the Court -- the Court doesn't say, "I find as a  
8 matter of fact he didn't work on the album." What the Court  
9 says is, "According to Blair, Gaynor, and Gaga, neither Blair  
10 nor Gaynor worked specifically on the Gaga song."

11 So there's a -- and it's that paragraph about the  
12 recanting.

13 **THE COURT:** Right. Right. Right.

14 **MR. KLAUS:** Here, Your Honor -- here, Your Honor, we  
15 really have nothing -- we have nothing analogous to that. The  
16 plaintiff had numerous opportunities to depose Pixar witnesses  
17 who were at the film festival. She chose to depose Carlos  
18 Baena, who said he never went back to Pixar.

19 That's not a fact issue for the jury to decide there. He  
20 didn't go back. The last movie he had worked directly with  
21 Lasseter on was six years earlier.

22 She deposed Ms. Klaidman, who was the executive producer  
23 and the archivist. And there's nothing to suggest that Ms. --  
24 there's no evidence in the record from which one could suggest  
25 that there's something that was false about Ms. Klaidman's

1 testimony that she went back and she didn't discuss it.

2 The plaintiff had the opportunity to depose her. The  
3 plaintiff culled through numerous documents. What they showed  
4 you were communications that Ms. Klaidman had with Mr. Lasseter  
5 about exhibitions of the history of Pixar art in various  
6 places. Or in Pixar open house. Nothing about a collaborative  
7 creative process.

8 She has the burden on access and she hasn't established  
9 anyone, anyone who was at that screening having some direct  
10 link with Lasseter on anything.

11 But then we go to the next step, which is at an  
12 entirely -- there's no one, no one who's alleged to have been  
13 in the audience had anything to do with the creation of the  
14 teaser trailer. Nothing.

15 And so you do have to have some sort of a link in between  
16 the people who went to the film festival and John Lasseter.

17 So is it your -- wait a minute. Sorry. There needs to  
18 be a link between the people who went to the film festival and  
19 John Lasseter?

20 **MR. KLAUS:** And John Lasseter with respect to the  
21 creation of the teaser trailer.

22 **THE COURT:** Oh, no. See, I think there needs to be a  
23 link between the people who went to the film festival and John  
24 Lasseter. And more than just -- you know, I mean, it's -- you  
25 know, it's to be distinguished from a situation where, you

1 know, like the whole idea of Bayer corporate receipt is not  
2 enough; right? But this is more than Bayer corporate receipt.  
3 This is, you know, a situation where people went to a film  
4 festival and viewed the short and those people worked with  
5 Lasseter.

6 That, you know -- the question of whether there needs to  
7 be a connection between the people who viewed the short and  
8 Lasseter's work on the teaser trailer, I think that's a  
9 question for the jury.

10 The fact that there's a connection between those people  
11 and Lasseter, I think, causes it to go to the jury. Because  
12 I'm not supposed to be, you know, questioning whether they had  
13 any conversations with Lasseter either about *Snowman* or about  
14 the *Frozen* teaser trailer.

15 MR. KLAUS: It says, Your Honor, in the *Meta-Film* case --  
16 again, between 1355 and 56, either the intermediary's the  
17 supervisor -- not the case here, was part of the same work unit  
18 as the copier.

19 THE COURT: That begs the question.

20 MR. KLAUS: Well, that begs the question, Your Honor,  
21 only in the sense that the same work unit that you're  
22 describing, under that theory the work unit is the entire  
23 studio, or the entire creative division of the studio, which is  
24 -- there's no case, as far as I know, that goes so far as to  
25 say that simply because somebody is within the same studio they



1 are part of the same work unit.

2 THE COURT: Well, but they're creative people who work  
3 with Lasseter. Right? I mean, why -- I mean, do you agree  
4 that they're creative people who worked with Lasseter?

5 MR. KLAUS: I agree that they are creative people who  
6 work with Lasseter, Your Honor, but the rule that you would be  
7 announcing -- I know of no case that has gone this far -- but  
8 the rule that you would be announcing is that anyone who works  
9 in a studio with somebody else is part of the same work unit.

10 And then the realities of the situation -- I think this  
11 is one of the things that really was driving the decision --

12 THE COURT: Well, I mean, couldn't the rule that I -- I  
13 mean, why does that have to be the rule that I announce? I  
14 mean, in this case it's undisputed that they actually worked  
15 together; right?

16 MR. KLAUS: It's undisputed that -- it's undisputed that  
17 the they -- and I don't know who the -- if the "they" is Elise  
18 Klaidman --

19 THE COURT: Yes.

20 MR. KLAUS: -- that they worked at the same studio.

21 THE COURT: Together. I mean, they worked together;  
22 right?

23 MR. KLAUS: They work in the same building. What they  
24 work on is not -- there's no evidence that Ms. Klaidman worked  
25 on anything having to do with any movie. Ms. Klaidman is the

1       archivist. She's the head of the after works program by which  
2       they do -- not animated films -- live action films.

3       These are for Pixar people who are not doing what they do  
4       during their day job. It is an after work proposition.

5       **THE COURT:** Speaking of announcing rules. The language  
6       that you just quoted to me from *Meta-Film* where it has to be  
7       either a supervisor or somebody in the same unit, is there a  
8       Ninth Circuit case that adopts that formulation? Or is that  
9       just the District Court in *Meta-Film*?

10       **MR. KLAUS:** I believe it's not just the *Meta Film's* case.  
11       The same language is repeated again in the *Gable* case, which is  
12       from Judge Wilson.

13       **THE COURT:** Right. Okay.

14       **MR. KLAUS:** And the law on -- the law on -- and this is  
15       also with respect to the nexus that's required, or the close  
16       relationship that is required.

17       You also see that repeated in the *Jorgenson* case, which  
18       is from the Second Circuit.

19       **THE COURT:** Okay.

20       **MR. KLAUS:** And I think that the general rule -- I mean,  
21       the closest case that I think one might be -- because we've --  
22       one of the things we have been discussing so far is how would  
23       the initial information have gotten into the Pixar system.

24       There's still the -- there's still the question of how  
25       did that information get to make it through John Lasseter, and

1       how was it recalled during this one -- you know, the one  
2       session on January 15th that it was pulled up.

3               And that -- I think what you're talking about there --  
4       because I don't think there's any contention that what happened  
5       was Mr. Lasseter typed something into YouTube at that meeting,  
6       or went through the plaintiff's website, or said, "Get me that  
7       Kelly Wilson film that the people were talking about."

8               It is a question of -- I think what the theory would be,  
9       it would be something of unconscious copy. That I saw  
10       something or something made such an impact on me.

11              And the cases, I think, are relevant for you to look at  
12       on the unconscious copying point, which is another part of the  
13       chain of hypo- -- the chain of events.

14              **THE COURT:** That was the *Michael Bolton* case; right?  
15       That was one of the cases, was the *Michael Bolton* case; right?

16              And the theory was that, you know, it could have been  
17       unconscious copying because he had -- I can't remember, what  
18       was the name of the band?

19              **MR. KLAUS:** The Isley Brothers.

20              **THE COURT:** The Isley Brothers.

21              So he listened to the Isley Brothers when he was a  
22       teenager, and this song by the Isley Brothers never made it  
23       into the Billboard Top 100, there was no evidence that it ever  
24       played on the radio in the area where Michael Bolton ever grew  
25       up, but there was evidence that Michael Bolton really liked the

1 Isley Brothers.

2 And the theory was that, you know, 20 years later -- or  
3 maybe it was 15 years later or something like that, I don't  
4 know -- Bolton might well have copied that song.

5 I mean, that connection -- and the Court, as I recall in  
6 that case, said that that needs to go to a jury.

7 I mean, that connection seems a lot more attenuated than  
8 this one.

9 MR. KLAUS: Your Honor, it wasn't just that. It was  
10 that -- I believe -- there was actually testimony in the case  
11 that Bolton had said that he wondered if he was copying a song  
12 by another famous singer, that there was --

13 THE COURT: That's true.

14 MR. KLAUS: He said he was -- he confessed to the fact  
15 that he was a fan.

16 THE COURT: Right.

17 MR. KLAUS: In fact, there was testimony that -- that the  
18 song was playing and was popular on the radio when he was  
19 taking a trip to Buffalo.

20 THE COURT: I know, but that's --

21 MR. KLAUS: They really went into some extensive detail.

22 THE COURT: Yeah, I mean, that's really quite attenuated.  
23 I mean --

24 MR. KLAUS: Well, I don't know that that -- but, Your  
25 Honor, that is -- you're talking about a major popular group,

1 and the defendant, the alleged copier, who freely admits, "I  
2 was a huge fan of this group. I thought I might actually be  
3 copying."

4 That's not -- I don't --

5 **THE COURT:** Well, no. I mean, that's -- you're putting  
6 those two things together, but they were separate things. One  
7 is he -- there were some prior statements where he admitted he  
8 was a huge fan, and then there was a separate thing where,  
9 during -- while he was composing or creating the song, he said,  
10 "Hey, like, is this -- are we recording a song by so and so?",  
11 and he was talking about a different artist; right?

12 **MR. KLAUS:** No, but -- I'm not putting that together.  
13 Judge Nelson was putting it together in her opinion. I mean,  
14 it says right on page 484, after she describes all the facts  
15 that were in the record she says, "It's the cumulative weight  
16 of all of these facts."

17 Frankly, what she said was, "This is a very weak case."

18 **THE COURT:** Mm-hm. Right.

19 **MR. KLAUS:** But the cumulative weight --

20 **THE COURT:** But it has to go to a jury. It's a very weak  
21 case, but looking at it all in its totality, it's got to go to  
22 a jury.

23 And that actually leads to this burning question that I  
24 referred to earlier, wouldn't -- one thing that I find a little  
25 bit strange about how a lot of the cases treat access is they

1 say, you know, plaintiff can establish access in one of two  
2 ways. One is that there's a chain; right? Chain of events or  
3 a chain of people. The other is widespread dissemination.

4 And then a lot of times the Courts seem to analyze those  
5 two things in the disjunctive.

6 And a Court might say, "Well, the chain of events is  
7 not -- you know, is not -- is too attenuated, so the plaintiff  
8 can't establish access or go to a jury on access via the chain  
9 of events' route.

10 And then we look at widespread dissemination and well,  
11 you know, the work was out there, the T-shirts were out there,  
12 there were 2,000 T-shirts circulating around the Los Angeles  
13 County area -- or Southern California or whatever, but it  
14 doesn't rise to the level of widespread dissemination and so  
15 we're not going to allow the plaintiff to go forward on that  
16 theory of access.

17 That type of analysis seems very strange to me. And it  
18 seems like it might be a little bit in tension with Judge  
19 Nelson's analysis in the Michael Bolton case.

20 It seems to me that the question is, is there a  
21 reasonable possibility that the defendant had an opportunity to  
22 copy or view the work. And I don't understand why we shouldn't  
23 view all of the evidence holistically to figure out if all of  
24 it rises to the level of reasonable possibility, or could rise  
25 to the level of reasonable possibility.

1           And so as applied to this case -- you know, we've been  
2           focusing thus far on the San Francisco Film Festival. But I  
3           don't understand why -- you know, it may be that the fact that  
4           Ms. Wilson sent her application to Disney eight times, with  
5           reference to her website some occasions before she had created  
6           this snowman, other occasions after she had created  
7           *The Snowman*, it may be that that, on its own, could not give  
8           rise to a holding that the access question should go to the  
9           jury.

10           And it may be that the fact that her film played at eight  
11           film festivals, in itself, wouldn't lead to a conclusion that  
12           there was widespread dissemination such that you would  
13           automatically assume access.

14           But just because the applications -- the sending of the  
15           applications don't, themselves, justify sending the case to the  
16           jury, and the fact that the work was shown at eight film  
17           festivals might not, in itself, justify sending the case to the  
18           jury -- although I wonder about that, but the totality of it  
19           all, you know, I mean, don't you add it up?

20           I mean, it's not a -- it's not a situation where the  
21           sending of the applications has zero evidentiary value, it's --  
22           you would assign a value to it in terms of increasing the  
23           possibility that the defendants had the opportunity to view it  
24           or copy it. You would just say that it doesn't increase the  
25           possibility enough to justify sending it to a jury. And maybe

1       you would argue the same thing about, you know, the fact that  
2       her work was shown at eight film festivals.

3               But what about when you add it all up? What about when  
4       you add up the fact that it was shown at eight film festivals,  
5       she, coincidentally, sent eight applications to Disney, and  
6       there was this interaction at the San Francisco Film Festival  
7       and a potential interaction at the Santa Barbara Film Festival.

8               I mean, why -- why can -- I guess it's a question to you.  
9       Can I -- you know, does the law allow me to examine all of that  
10      holistically to, you know, determine whether it rises to the  
11      level of reasonable possibility of access?

12              **MR. KLAUS:** I would submit it can't be, Your Honor.  
13      Because what --

14              **THE COURT:** I can't look at it that way.

15              **MR. KLAUS:** -- it has to be is there has to be a chain of  
16      access.

17              **THE COURT:** And if there is not a chain that is  
18      sufficiently close, then I have to just disregard that  
19      entirely. And if there's not -- if there is dissemination that  
20      is not -- it doesn't rise to the level of widespread  
21      dissemination, then I have to disregard that entirely.

22              **MR. KLAUS:** If -- you can only look at them together if  
23      they go through the same chain, Your Honor.

24              With respect, what -- let me --

25              **THE COURT:** Does that make sense?



1           **MR. KLAUS:** Yes. Absolutely --

2           **THE COURT:** Why?

3           **MR. KLAUS:** -- it makes sense.

4           Because what -- it is her burden to show -- it's her  
5           burden to show that somebody who was in a position to actually  
6           influence the development, the expression, that was used in the  
7           teaser trailer, was in a direct chain of having received the  
8           information.

9           **THE COURT:** Well, not on the wide- -- not if you go the  
10          widespread dissemination route; right? I mean, if you go the  
11          widespread dissemination route then that's the end of the  
12          matter; right?

13          **MR. KLAUS:** She can't pos- --

14          **THE COURT:** Because we presume, we presume that everyone  
15          had access, or everyone in the field, or whatever, had access.

16          **MR. KLAUS:** And the case law is clear that what it takes  
17          to reach the level of widespread dissemination is considerable  
18          commercial success -- zero evidence of that here; none -- or,  
19          ready availability on the market.

20          **THE COURT:** Why --

21          **MR. KLAUS:** No evidence of that.

22          **THE COURT:** So -- so I guess I have a couple of  
23          questions.

24          **MR. KLAUS:** Sure.

25          **THE COURT:** One is let's assume that it doesn't rise to

1 the level of widespread dissemination. Let's say the fact that  
2 it showed at eight film festivals doesn't rise to the level of  
3 widespread dissemination under the test that you articulated.

4 I do still question that. Because I wonder if having  
5 your film shown at eight film festivals is -- could be defined  
6 as commercial success.

7 But let's say it doesn't rise to the level of widespread  
8 dissemination. I still don't understand the idea that I would  
9 then need to throw it out all together.

10 To say that the fact that it -- the fact that it was  
11 shown at eight film festivals has no evidentiary value  
12 whatsoever in determining whether it should go -- the question  
13 of reasonable possibility of opportunity to copy or view goes  
14 to the jury.

15 **MR. KLAUS:** Because, Your Honor -- let me see if I can  
16 try to describe it this way: If, on -- she has to -- she has  
17 to provide evidence of a reasonable possibility of some  
18 connection, some pathway.

19 And in the -- in each of these cases, YouTube, Vimeo, it  
20 was on my résumé, I submitted an application, my co-creator  
21 submitted an application, on each of those, there are different  
22 pathways that she's alleging. There are different pathways to  
23 the point of John Lasseter that she's alleging.

24 One is --

25 **THE COURT:** Well, the ultimate question is whether there

1 was a reasonable possibility that they had the opportunity to  
2 view.

3 And why is it that we -- and I concede to you that the  
4 cases seem to describe it this way; right? That once you --  
5 once you go down this pathway, you can't consider anything else  
6 that might fall in -- you know, that might -- you might meet  
7 along this path. The other path.

8 **MR. KLAUS:** If there is overlap, you could consider them.  
9 If there was overlap. Of which there's none here.

10 But let me also say the following, which is if, to get to  
11 the level of reasonable possibility, someone has to get to --  
12 let's concede that is something less than what you might say is  
13 a probability standard.

14 But if you have, out of a scale of 0 to 100, on one of  
15 the chains you have a 5, which wherever you draw the line, 5  
16 ain't enough. Five is just a bare possibility.

17 And you have another chain where it goes up to 5, maybe  
18 even 6 or 7. Still no dispute. That's just a bare  
19 possibility.

20 And so on down the line.

21 **THE COURT:** And so -- right.

22 **MR. KLAUS:** At the end you can't combine --

23 **THE COURT:** You can't combine them.

24 **MR. KLAUS:** It's a total cheat to combine them and say,  
25 "Well, I'm going to take 5 from this chain and 5 from this

1 chain and 5 from this chain and 5 from this chain and when I  
2 throw them all together, even though they're unrelated chains  
3 of supposed access, I now get the 35 or 40 and isn't that  
4 clever.

5 That's just -- that can't be the case, Your Honor.

6 **THE COURT:** But I -- I mean, that -- that seems to -- I  
7 mean, you know, I'm not going to push you too hard on it  
8 because it does seem that the cases describe it in the way that  
9 you say, although it doesn't seem like any of the cases have  
10 discussed it in as much detail as you've just discussed it, or  
11 articulated it in the way you've articulated it.

12 But I -- that seems quite contrary to me to common sense.

13 I mean, let's say -- I'm going to make up a hypothetical  
14 on the fly, so it's probably going to be useless.

15 But -- well, without trying to make up a detailed  
16 hypothetical, let's just think about, like, a case -- probable  
17 cause -- a Fourth Amendment case, okay? And the, you know,  
18 police officer say, "I had probable cause to arrest this  
19 person, and here are the, like, ten conclusions that I came to  
20 that support probable cause to arrest this person." One, two,  
21 three, four, five, six, seven, eight, nine, ten.

22 And let's say we would agree that no one conclusion, no  
23 one factor that the officer took into account would, itself,  
24 give rise to probable cause to conclude that somebody committed  
25 a crime.

1           Let's say that no two of the ten factors, when added  
2 together, would rise to the level of probable cause.

3           But if you believe the officer about the -- all ten  
4 factors, those ten factors would combine to rise to the level  
5 of probable cause so that he was justified in arresting the  
6 person.

7           It would -- it would seem really weird to say, "Well,  
8 that's cheating, to combine all of those things."

9           What's the difference between that and this situation?

10          **MR. KLAUS:** The difference there is there's one officer  
11 with one brain, there's one officer who's got one mind, but  
12 there's a totality of things that are going into whether he  
13 thinks the accumulation of those are enough.

14          In this situation --

15          **THE COURT:** But why does that matter? I mean, the point  
16 I'm making is not about one officer versus many officers; the  
17 point I'm making is more of an evidentiary one. I mean, if  
18 you've got five pieces of evidence, you know, it may be that --  
19 it may be that one piece of evidence, or two of the five pieces  
20 of evidence, don't, on their own, you know, support a  
21 conclusion that "X" but if you take all five and put them  
22 together, it does support a conclusion of "X."

23          And in this case, I mean, let's think about it this way:  
24 Let's say -- let's wipe the slate completely clean in this  
25 case, okay? No -- Ms. Wilson created *The Snowman* in her home,

1 never shared it with anybody, never communicated with anybody,  
2 never sent it to anybody. She's the only person who ever saw  
3 it in her life.

4 What percentage chance is there that the folks at Disney  
5 had an opportunity to copy or view her work?

6 Zero. Right?

7 **MR. KLAUS:** On those facts, zero.

8 **THE COURT:** Okay. Now let's change the facts. Let's say  
9 that everything else is the same. She didn't send it to  
10 anybody, she didn't talk to anybody about it, but it was shown  
11 at the Sequoia theater in Mill Valley, in one -- in one  
12 showing, as a preview for -- a preview to a movie that was  
13 being shown there one night.

14 What percentage chance? Zero or something higher than  
15 zero? Maybe one of the Disney people was in Mill Valley  
16 watching the movie; right? So maybe .02 percent chance?

17 **MR. KLAUS:** What you've thrown in it, in terms of -- I  
18 don't believe that -- I believe that the cases say that you  
19 can't simply assume that maybe there was a Disney person there  
20 and that somehow moved the needle up.

21 **THE COURT:** Well --

22 **MR. KLAUS:** If it was -- if it was shown --

23 **THE COURT:** Well, no. I mean, the cases there would  
24 say -- excuse me -- that's not a reasonable possibility of  
25 access. But I don't think the cases say that the chances of

1 the Disney people seeing that is still zero. I mean, it's  
2 something higher than zero. It might be .01 percent chance;  
3 right?

4 **MR. KLAUS:** It is something higher than zero. I would  
5 agree.

6 **THE COURT:** Okay. So now let's say that her work is  
7 shown only at one film festival, the Mill Valley Film Festival.

8 At that point, the person -- there's a higher chance that  
9 somebody at Disney saw it; right? Maybe .5 percent, maybe  
10 1 percent.

11 **MR. KLAUS:** I would agree that -- I would agree that the  
12 fact that it's shown at the Mill Valley Film Festival is higher  
13 than zero. I wouldn't agree, unless there was evidence, that  
14 there were some people who were present.

15 **THE COURT:** Oh, we would never conclude, by a  
16 preponderance of the evidence, that some people were present.  
17 We would never conclude that that, in and of itself, created a  
18 reasonable possibility that the Disney folks saw the short.

19 But the chance -- the chances of them having seen the  
20 short are increasing; right?

21 Now let's say that she never sends her application to  
22 Disney, she never attends, you know, a film festival with the  
23 Pixar people, she never puts it on YouTube. The only thing  
24 that happens is her *The Snowman* is shown at five film  
25 festivals -- one in Los Angeles, one in San Francisco, one in

1 Santa Barbara, one in New York, and one in Dubai.

2 Substantially more likely that somebody at Disney saw  
3 it -- right? -- than if it just showed at the Mill Valley Film  
4 Festival.

5 MR. KLAUS: No. Not unless there's some --

6 THE COURT: No, I'm not saying -- I'm not saying as a  
7 matter of law that it gets her to the point of reasonable  
8 possibility of opportunity to view, necessarily. What I'm  
9 saying is that if it's shown at five film festivals in the  
10 locations that I just rattled off, whatever they were, it --  
11 there's a much higher chance that somebody from Disney saw it  
12 than if it was only shown at the Mill Valley Film Festival.  
13 Right?

14 You don't agree, as a factual matter, there's not a  
15 higher chance that somebody at Disney saw *The Snowman* if it  
16 played at five film festivals, including a couple in Southern  
17 California?

18 MR. KLAUS: I still go -- I still go back to --

19 THE COURT: As a factual matter. Not as a legal matter.

20 MR. KLAUS: As a factual matter, I would want to know --  
21 and I think the cases require you to know, was somebody from  
22 Disney at one of those film festivals? You're talking about  
23 did somebody -- because it shows at more and more film  
24 festivals, was there more opportunity for somebody to go to the  
25 film festival?



1 Yes, I agree with you, there was more opportunity --

2 **THE COURT:** And therefore, as a factual matter, there is  
3 a higher chance that somebody at Disney saw *The Snowman* under  
4 that scenario; right?

5 **MR. KLAUS:** I will accept that under that scenario there  
6 is a --

7 **THE COURT:** As a factual matter. I'm not asking you to  
8 make any legal concessions.

9 **MR. KLAUS:** I would say that that is a -- there's a  
10 higher metaphysical, if you go somewhere beyond .001 --

11 **THE COURT:** I mean, the higher metaphysical, I mean,  
12 forget about metaphysical. I mean, do you know anybody on this  
13 planet who would say that there's not a higher chance that  
14 somebody at Disney saw the work if it were shown at the five  
15 film festivals as opposed to if it were shown at the  
16 Mill Valley Film Festival only?

17 **MR. KLAUS:** If these were -- if these were film festivals  
18 that people from Disney didn't attend, then the likelihood --

19 **THE COURT:** You're changing the hypothetical. That's not  
20 my -- that's not the hypothetical. The hypothetical is -- I  
21 mean, it's a fairly simple question. I mean, why would it  
22 cause you so much trouble to concede that as a factual matter?  
23 Why would it be such a problem for you to concede that as a  
24 factual matter? It seems pretty obvious.

25 **MR. KLAUS:** I'm not going to fight the hypothetical, Your

1 Honor. I didn't think the hypothetical had built into it that  
2 there was an increasing probability that somebody from Disney  
3 actually attended those.

4 **THE COURT:** It doesn't. It doesn't. The only thing we  
5 know is that instead of it being shown at one film festival in  
6 Mill Valley it's shown at five film festivals in San Francisco,  
7 Los Angeles, Santa Barbara, New York, and Dubai.

8 On those two -- are you saying that there's no greater  
9 chance that somebody who works for Disney saw *The Snowman* in  
10 the second hypothetical?

11 **MR. KLAUS:** I -- call me crazy; I am saying that, Your  
12 Honor. But I will except, for purposes of the hypothetical --  
13 just to see where we're going with this, I will -- let me go  
14 along with this and say that there is some incremental --  
15 incremental or greater chance.

16 **THE COURT:** Yeah, I'm not going to ask you to quantify  
17 it.

18 **MR. KLAUS:** Okay. So we go there. Then what?

19 **THE COURT:** Okay. Then -- so then let's say it's shown  
20 at 20 film festivals. You'd agree -- maybe you can't agree to  
21 that. But 20 film festivals instead of five. And over the  
22 course of three years, instead of in a six-month time frame,  
23 shown at 20 film festivals increases the chances even more that  
24 somebody at Disney might have seen *The Snowman*.

25 So then -- but then you might say, "Well, maybe that

1 doesn't rise to the level of the legal label of widespread  
2 dissemination, and so whatever the chances are that the showing  
3 at 50 film festivals, or 60 film festivals, or whatever,  
4 whatever the chances are that somebody at Disney saw the film,  
5 that has to be disregarded completely, that cannot be added to  
6 the equation, that cannot be added to the calculus.

7 **MR. KLAUS:** Which equation, though, Your Honor?

8 **THE COURT:** Well, let's say -- just for example, let's  
9 say I don't know what reasonable possibility is. It's less  
10 than 50 percent chance; right? Reasonable possibility is less  
11 than 50 percent chance. So let's say that it's 20 percent.  
12 Let's say that when you look at the evidence there's a  
13 20-percent chance that somebody involved in the creation of the  
14 *Frozen* teaser trailer had the opportunity to view or copy the  
15 work.

16 And let's say that we were to examine -- we were to look  
17 at the fact that it played in eight film festivals, *The Snowman*  
18 played at eight film festivals.

19 And let's say, well, okay, you know, this is a film  
20 festival and this is a section on animation and probably a  
21 pretty good chance some folks from Disney were there, so let's  
22 say that creates a, you know, 5 percent chance that somebody --  
23 somebody involved in the creation of the *Frozen* teaser trailer  
24 saw it, or that somebody who works with somebody involved in  
25 the creation -- works closely with somebody involved in the

1 creation of the *Frozen* teaser trailer saw it.

2 And then we'll say -- okay, so 5 percent.

3 Then we'll say -- well, we add the fact that Ms. Wilson  
4 and her partner sent applications a number of times to Disney.  
5 And let's say that additional fact gets us up to 12 percent.  
6 12 percent chance of access.

7 And then we add the fact that people from Pixar who  
8 worked with Lasseter were directly -- were -- had their short  
9 shown at one of the same film festivals that Wilson had her  
10 short shown and they were on stage together and they were  
11 talking about their shorts together, and that that, maybe -- on  
12 its own, that wouldn't rise to the level of reasonable  
13 possibility, but when you consider the whole mix of evidence it  
14 gets us above that magical 20 percent threshold.

15 What law -- is there any law out there that prevents us  
16 from analyzing it in that way? That requires us to say, "Okay,  
17 the fact that it was shown at eight film festivals in itself  
18 doesn't constitute widespread dissemination so we have to  
19 discount it entirely and we have to get rid of that 8 percent?

20 **MR. KLAUS:** So two things, Your Honor. Number one, to  
21 answer the direct question, yes, the law is that it has to be a  
22 particular chain.

23 And I'm looking, just for example, at Judge Wilson's  
24 opinion in the *Bernal* against *Paradigm Talent & Literary Agency*  
25 case, page 788 F.Supp.2nd at 1054. Has to be a particular

1 chain of events established between the plaintiff's work and  
2 the defendant's access to that work.

3 **THE COURT:** Okay.

4 **MR. KLAUS:** To go back to -- you know, to go back to sort  
5 of a broader point here, Your Honor, there's not just access in  
6 the air. Access has to be established either by proof that the  
7 plaintiff's work was so out there in the world that it couldn't  
8 have been avoided, which we don't have -- which we don't have  
9 in this case, or it has to go through a particular chain.

10 And still, the problem with even accepting -- I want to  
11 come back to these because I don't accept them as applied to  
12 this case.

13 But even accepting that there is some greater than zero  
14 possibility with respect to any of these, they all go off on  
15 different chains. In one chain, you've got somebody who was at  
16 a film festival. And what's the connection through them to  
17 Lasseter? In another chain, you've got an application that was  
18 received by a recruiting department in some establishment of  
19 which there is zero evidence that the application actually got  
20 past the gatekeeper recruiter and then went to somebody who was  
21 in some sort of creative position and that that person  
22 ultimately was in a --

23 There is no evidence of any of that.

24 And the other thing that the law is very clear on -- and  
25 again, this is -- gets restated in Judge Wilson's opinion in

1       *Bernal*, is that wherever you measure that line, what you have  
2       to have is significant, affirmative, and probative evidence  
3       that she bears the burden on.

4               And on all of these -- on all of these points --

5               **THE COURT:** But it can be circumstantial evidence, and it  
6       can be -- and the circumstantial evidence can be there was a  
7       connection between the person who saw the work and the person  
8       who created the accused work.

9               **MR. KLAUS:** There can't -- they can be circumstantial but  
10      it can't be speculative.

11              **THE COURT:** Right.

12              **MR. KLAUS:** And here, Your Honor, there is -- there's  
13      nothing. There is nothing connecting. There's no --

14              **THE COURT:** The connection cannot be speculative. That's  
15      the thing. The connection cannot be speculative. That is  
16      true.

17              **MR. KLAUS:** And there is nothing that the plaintiff has  
18      introduced here that makes any connection -- let's start with  
19      the film festivals. Nothing that makes any connection between  
20      any individual who was at that film festival and John Lasseter  
21      or any other member of the *Frozen* creative team. There's  
22      nothing. There is no evidence that she has put in to establish  
23      what that is.

24              It's simply, well, they went to see it, they remembered  
25      it, they work in the same motion picture studio as Lasseter,

1       therefore we're going to impute whatever they saw to him.

2               And that would be extraordinary, Your Honor. There  
3       simply would be that level of saying that once somebody from  
4       the outside brings that in with their memory that that is  
5       imputed throughout the studio to the creative head would be --  
6       it would be extraordinary. There is no evidence to fill that  
7       point in that chain.

8               Going to the next particular chain.

9               With the applications and sending things in, there is no  
10       evidence, none, that any of these -- that any of these many  
11       applications got past a recruiter.

12              In fact, the inference -- I think the only reasonable  
13       inference to draw from the evidence, Your Honor, is that  
14       somebody who sends eight, nine, ten serial applications in a  
15       month, and continues to go no- --

16              **THE COURT:** It wasn't a month. It was, like -- it was --

17              **MR. KLAUS:** Couple of months.

18              **THE COURT:** -- four years, I think.

19              **MR. KLAUS:** No, I think there was -- there was one period  
20       where Mr. Wrischnik sent, I think, five within a span of  
21       about --

22              **THE COURT:** Oh, let's focus in on Ms. Wilson's.

23              **MR. KLAUS:** Okay. Again, she did eight over the course  
24       of a couple of years. So I grant you that. There was a little  
25       bit broader.

1 But there's no evidence that these things ever went  
2 anywhere, that they ever progressed beyond a gatekeeper.

3 **THE COURT:** Yeah. So in other words, you're -- yeah. I  
4 mean, I might be with you on that point, that the -- sending of  
5 the applications could be zero, or close to zero. If you  
6 analyze it the way I think it should be analyzed. It may be  
7 that I -- the case law doesn't permit that. It seems like, at  
8 a minimum, the case law -- at least the way the Courts intone  
9 the test, it seems -- it seems contrary to the way I  
10 tentatively think it should be analyzed.

11 But I'm also -- I'm not sure it matters, for purposes of  
12 this case. Because -- primarily of the San Francisco Film  
13 Festival.

14 But can I ask you -- I was curious on the YouTube issue.  
15 I just -- I don't think we need to spend a lot of time on it,  
16 but I was curious about the state of the record with respect to  
17 the person who searched -- who did the search for "snowman and  
18 carrot," I think was the search.

19 And I think they -- somebody from parts unknown did a  
20 search on YouTube using the term -- the words "snowman and  
21 carrot." And I think that happened on January 13th, if I  
22 remember correctly.

23 **MR. KLAUS:** Let me just double check the Declaration.

24 **THE COURT:** And I think the -- maybe the person viewed  
25 only the first minute of the video before -- (pause.)



1           **MR. KLAUS:** January 12th. It wasn't snowman --

2           **THE COURT:** January 12th.

3           **MR. KLAUS:** -- and carrot. It was snowman and rabbit.

4           **THE COURT:** Snowman and rabbit. Right. Sorry.

5           **MR. KLAUS:** And the duration of the viewing was  
6 zero seconds.

7           **THE COURT:** Zero seconds? Oh, I thought it was, like,  
8 60 seconds or 54 seconds or something.

9           **MR. KLAUS:** Your Honor, on January 12th, I believe, if we  
10 look at Exhibit 30 to Ms. Cox's Declaration, the analytics for  
11 that day show --

12           **THE COURT:** Exhibit 30?

13           **MR. KLAUS:** Oh, I'm sorry. I stand corrected. There was  
14 one viewing from California. The duration of that viewing was  
15 zero seconds.

16           **THE COURT:** Right.

17           **MR. KLAUS:** There was another viewing -- there were two  
18 viewings that day -- from an unknown region in the US.

19           **THE COURT:** Parts unknown.

20           **MR. KLAUS:** Parts unknown. And the view on that day was  
21 56 seconds, which --

22           **THE COURT:** And that was the person who searched for  
23 snowman and rabbit?

24           **MR. KLAUS:** Yes.

25           **THE COURT:** Is there anything in the record that explains

1        why it's parts unknown, why it's unknown where that search was  
2        initiated?

3            **MR. KLAUS:** I don't believe there's anything that's in  
4        the record.

5            I also think, Your Honor, just to be very clear,  
6        56 seconds into *The Snowman* he hasn't even stepped out onto the  
7        ice.

8            And the type of copying that is being alleged here -- we  
9        haven't talked about that so far, Your Honor, but the type of  
10       copying that's being alleged here is not, "I'm going to watch  
11       the first 10 seconds or 15 seconds of the YouTube video and I  
12       know what the plot is."

13           The type of copying --

14           **THE COURT:** But maybe I'm reminded what the plot is.

15           **MR. KLAUS:** The type of copying --

16           **THE COURT:** If I've seen it -- if I've seen it at a film  
17       festival.

18           **MR. KLAUS:** Right. But who -- who has seen it at a film  
19       festival? John Lasseter wasn't at the film festival. Nobody  
20       else, who was in the room when the team brainstormed that idea  
21       between January 7th and January 15th, there's no evidence that  
22       any of them were at the film festival.

23           There's no evidence, whatsoever, of any connection  
24       between anyone who was at that film festival and anyone who was  
25       in the room for those meetings in between the time of that.

1 And again, Your Honor, this is one of the reasons that I  
2 brought up the 3 *Boyz* case. Another case that's of a  
3 similar -- of a similar type is the George Harrison case  
4 involving The Chiffons' "He's So Fine," and his "My Sweet  
5 Lord."

6 And of course nobody was going to disbelieve George  
7 Harrison.

8 But one of the things that -- one of the things that the  
9 Court said was this was an extremely popular song.

10 It's the same thing with respect to the Isley Brothers'  
11 case. It's one of the --

12 **THE COURT:** Well, except for that wasn't an extremely  
13 popular song.

14 Which was the 3 *Boyz*' case again? Was that the Destiny's  
15 Child one?

16 **MR. KLAUS:** No, 3 *Boyz* Corp. is the Isley Brothers.  
17 That's the name of their -- that's the name of their --

18 **THE COURT:** Oh, that's the -- the Michael Bolton case.

19 **MR. KLAUS:** Well, what some other people call the Michael  
20 Bolton case I'm calling the --

21 **THE COURT:** How could you call it anything other than the  
22 Michael Bolton case? Sorry.

23 **MR. KLAUS:** That's okay, Your Honor.

24 **THE COURT:** I'm a big fan, big fan of Michael Bolton.

25 **MR. KLAUS:** Please don't hold it against me.

1 Your Honor, there is -- again --

2 **THE COURT:** Particularly his *Saturday Night Live* video.

3 I don't know if you've ever seen Michael Bolton's

4 *Saturday Night* with Andy -- Andy Sandberg?

5 **MR. KLAUS:** I will grant you that's an extremely funny

6 video. I will grant you that.

7 **THE COURT:** We actually had another case -- we had a case

8 involving another one of those S & L shorts and stumbled upon

9 the Michael Bolton one and we've watched it, like, a hundred

10 times in our chambers, but --

11 **MR. KLAUS:** I agree with you, that is very funny.

12 But again, Your Honor, here, with respect --

13 **THE COURT:** Back to this case?

14 **MR. KLAUS:** Back to this case, this is not the -- there's

15 no evidence that *The Snowman* was "Love is a Wonderful Thing."

16 There's no evidence that *The Snowman* was "He's So Fine."

17 Again, it's -- the evidence that it was shown at a film

18 festival, that there were people from an entirely different

19 motion picture studio who attended the event with the people

20 who were up on stage, with the executive -- again, there's

21 no -- there's nothing that fills in the particular chain going

22 back to John Lasseter. There's no evidence.

23 There is speculation. There is a guess. There's

24 conjecture that somebody might have -- somewhere in a cafeteria

25 somewhere might have had a discussion.

1           And then you pile on top of that, Your Honor, the idea  
2           that at the point at which the brainstorming was going on for  
3           the teaser trailer that this video had so stuck in  
4           Mr. Lasseter's mind there was some reason to think that it  
5           was -- it was so impact-full and so important that it sort of  
6           necessarily popped up when the notes of the development and the  
7           story boards demonstrate the logical progression and the  
8           organic progression of that idea.

9           **THE COURT:** I mean, the story boards tell a really, you  
10          know, interesting story. I mean, I think it's -- I think it's  
11          probably a story to be told to the jury, but --

12          Can I ask you one other, just, quick kind of nit-picky  
13          question, which is, you know, they talk about opportunity to  
14          view or copy. That's the language that the courts use,  
15          "opportunity to view or copy." And I'm wondering, like, what  
16          about the scenario where it's described to somebody? Like,  
17          they didn't view it. I guess if, like, just hypothetically  
18          somebody describes it to Lasseter. I'm not saying that the  
19          evidence suggests that this happened or that it shows that it  
20          happened, but let's say somebody comes back from the film  
21          festival and describes this in detail, this thing to Lasseter.

22          He hasn't viewed it, but would that -- would that fit  
23          within "opportunity to copy" because it was described to him in  
24          so much detail that he -- that that description created for him  
25          the opportunity to copy it?

1           **MR. KLAUS:** I don't know -- the short answer, I don't  
2 know of any case that says one way or the other whether it  
3 would. The description by this unknown, unknown person, this  
4 totally hypothetically world of conveying something to him and  
5 him having -- Your Honor, with respect, I just think that  
6 leaves -- that goes beyond the area of something that is proper  
7 to submit to a jury. It's totally fanciful conjecture to say  
8 well, maybe somebody went back and described the plot of this  
9 work in excruciating detail and it made such an impact that two  
10 years later, when he was in a room where people were talking  
11 about Olaf going out on the ice, where people were talking  
12 about Olaf sneezing his nose, where people were talking about  
13 the idea of there being a conflict, that suddenly what you had  
14 was this, you know, this miraculous Madeline-eating type recall  
15 of what had been -- of what had been said before.

16           And again, the cases are very clear, Your Honor, it is  
17 the plaintiff's burden to establish the particular chain with  
18 significant probative affirmative evidence. And here the  
19 chain -- it simply breaks off at the people who were at the  
20 film festival. There is no showing of any connection, there's  
21 no showing of them contributing any ideas.

22           And the type of chain of events that you're talking about  
23 here where maybe somebody went back and maybe somebody  
24 described it to John Lasseter and then maybe two and a half  
25 years later, I would submit that within the realm of the cases

1       that we've been looking at, the cases that are cited in the  
2       brief, there's not a single case that would say that that's  
3       evidence that is -- that is significant, affirmative, and  
4       probative, and is sufficient to get to a jury.

5               **THE COURT:** Okay. I don't think I have any other  
6       questions.

7               Assuming --

8               Thank you very much.

9               Assuming this goes to trial -- and I will go back and  
10       think more carefully about the stuff that we've discussed  
11       today. But assuming it goes to trial, is there anything that I  
12       can do for you all at this point on the case management front  
13       or are you okay right now?

14              **MR. KLAUS:** Well, I think the one thing on the case  
15       management front, Your Honor, is -- and I don't know how long  
16       Your Honor is thinking about cases to get a decision out. We  
17       are sort of on -- the written discovery request on damages have  
18       been served. If we're going to have to go down that path of  
19       going through damage discovery and retaining experts and the  
20       like, that's going to add even more expense to something that's  
21       already been an expensive case.

22              If -- so one question would be, would Your Honor be  
23       inclined to stay proceedings pending the disposition of your --  
24       your decision --

25              **THE COURT:** No. But would it be helpful if I promised to

1 get you a decision by no later than next week?

2 **MR. KLAUS:** I think that would help us.

3 **THE COURT:** Okay. I promise to get you a decision no  
4 later than next week. Possibly tomorrow. But more likely I'm  
5 going to want to spend some time over the weekend and early  
6 next week thinking about what you've said and re-reading the  
7 cases that you've cited.

8 **MR. KLAUS:** Okay.

9 **THE COURT:** Okay. Very good. Thanks.

10 **MR. BAER:** Your Honor, do you wish to hear from me at all  
11 on the plaintiff's side, or are you satisfied?

12 (No audible response.)

13 **MR. BAER:** Thank you, Your Honor.

14 (Whereupon, the proceedings were adjourned at 12:45 P.M.)  
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CERTIFICATE OF CONTRACT TRANSCRIBER

I, Kelly Polvi, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further, that I am not financially nor otherwise interested in the outcome of the action.

Dated this 20th day of April, 2015.

A handwritten signature in cursive script, appearing to read "Kelly Polvi".

---

Kelly Polvi, CSR #6389, RMR, FCRR  
Contract Transcriber